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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,821	12/21/2000	Daniel C. Carter	P06896US00/BAS	6567

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STITES & HARBISON PLLC  
1199 NORTH FAIRFAX STREET  
SUITE 900  
ALEXANDRIA, VA 22314

EXAMINER

LIU, SAMUEL W

ART UNIT PAPER NUMBER

1653

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/740,821	<b>Applicant(s)</b> CARTER, DANIEL C.	
	<b>Examiner</b> Samuel W Liu	<b>Art Unit</b> 1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 37-48 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-48 is/are allowed.
- 6) ☒ Claim(s) 37,38,40,43 and 44 is/are rejected.
- 7) ☒ Claim(s) 39 and 41-42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DTAILED ACTION**

### *Status of claims*

Claims 37-48 are pending.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 December 2004 has been entered. Also, Applicant's amendment filed 2 December 2004 which cancels claims 1-36 and adds claims 37-48 and the applicant's requests (filed 20 December 2004) for extension of time of five months has been entered.

The following Office action is applied to the pending claims 37-48.

### ***Claim Rejections - 35 USC §102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined

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was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 37-38, 40 and 43-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, D. G. (EP 0180968).

In the patent claims 1 and 7-8, Miller teaches a cosmetic composition comprising human serum albumin and a cleansing carrier, e.g., water (see page 3, line 18), which anticipates the instant claim 37.

In the patent claims 7-8, Miller teaches that the human serum albumin is recombinantly produced, which anticipates the instant claim 40.

On page 4, lines 13-17, Miller teaches that the composition is prepared in a lotion form, which anticipates the instant claim 38.

Also, Miller teaches that the human serum albumin is dissolved in a solution wherein water (a commonly accepted cleansing agent) (see page 3, lines 6-18) wherein the albumin concentration is in the range 5-50% by weight (i.e., mg/ml), which anticipates the instant claims 43 and 44.

Response to the rejection under USC 35 102(b)

The response filed 20 December 2004 discusses the issue that the Miller's composition is not for cleaning skin or hair; and thus, applicant infers that the Miller's patents teach away from the present composition (see pages 2-3). The applicant's argument has been fully considered but

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it is found to be unpersuasive because the Miller's cosmetic composition comprises the components, i.e., the human serum albumin and the carrier, i.e., rosewater, which is a cleansing agent or carrier; and because the current claim language as written does not explicitly set forth the limitation that the composition comprises a specific cleaning agent, e.g., soap, but rather broadly encompasses any kind of cleansing carrier or agent (*note that in the Miller's composition, the water acts as a cleansing carrier or agent*). Hence, the Miller's patent anticipates the instant claims.

Claims 37-38 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Mausner, J. (US Pat. No. 5254331).

In the patent claim 1, Mausner teaches a skin cream composition comprising human serum albumin (see item (i)); and in the patent claim 2, Mausner teaches that the said composition further comprises glyceryl arachidonate which has an inherent property of a skin cleansing agent when applied to skin. Thus, the Mausner's patent anticipates the instant claims 37-38. Please note that glyceryl arachidonate may render the Mausner's composition oily; yet, it has been known in the art that cleansing agent formulated in an oil form is commonly accepted and commercially used.

On column 7, line 3, Mausner teaches that the protein complex comprises about 28% serum protein (note that the patent claim 1 sets forth that the serum protein is human serum *albumin*). In the patent claim 1, item d, Mausner teaches that the protein complex comprises about 6.9% of said composition, i.e., the human serum albumin comprises 1.9% of said composition which is resulted from calculation:  $6.9\% \times 28\% = 1.9\%$ . The result 1.9% is

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equivalent to 1.9 g/100g, or approximately to 1.9 g per 100 ml of said skin *cream* composition, i.e., 19 mg/ml of the human serum albumin in said composition, which meets the limitation “1 to 250 mg/ml” of human serum albumin set forth in claim 43. Thus, the above Mausner’s teaching anticipates the instant claim 43.

Claims 37 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Naka D. (US Pat. No.5545723).

On column 3, lines 15-25, Naka teaches a composition comprising human serum albumin (HSA) and non-ionic detergent Triton X-100 (as a cleansing agent or carrier) in phosphate buffer solution. Thus, the Naka’s composition is qualified as a cleansing composition, and the Naka’s teaching anticipates the instant claim 37.

On the same column, Naka teaches that 50 mg of HSA is dissolved in a total volume of 5 ml which results in 10 mg/ml of HAS, which anticipates the instant claim 43.

Please note that “cleansing agent” has been given itself patentable weight in claim 37, and also note that the current claim language as written is broadly drawn to encompassing any type of cleansing agent, e.g., surfactant agent or the detergent mentioned above. Also, note that the preambles “*for skin or hair*” after “composition” is considered no patentable weight.

### ***Conclusion***

Claims 37-38, 40 and 43-44 are rejected. Claims 45-48 are free from prior art.

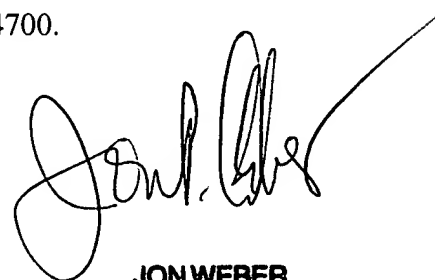
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Claims 39 and 41-42 are objected to as being dependent upon the rejected base claim (claim 37), but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel Wei Liu whose telephone number is 571-272-0949. The examiner can normally be reached from 9:00 a.m. to 5:00 p.m. on weekdays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber, can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-308-4242 or 703-872-9306 (official) or 703 872-9307 (after final). Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-4700.



Samuel Wei Liu, Ph.D.  
Patent Examiner, AU1653  
January 19, 2005



**JON WEBER**  
**SUPERVISORY PATENT EXAMINER**